

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 89-481-C - ORDER NO. 90-156
FEBRUARY 14, 1990

IN RE: Application of Southern Bell Telephone) ORDER RULING
& Telegraph Company for Approval of) ON VARIOUS
its new VG/ELG Depreciation Rates and) MOTIONS TO
Amortization Schedules) STRIKE

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of three separate Notice of Motion and Motion to Strike filed on behalf of Southern Bell Telephone & Telegraph Company (Southern Bell) pursuant to R.103-840 of the Rules of Practice and Procedure, Vol. 26, S.C. Code Ann., (Law. Co-op. 1976, as amended).

The first motion filed by Southern Bell requests the Commission to issue an Order striking certain delineated portions of the prefiled testimony of witness Thomas F. Gillett, appearing on behalf of the South Carolina Cable Television Association (SCCTA). The grounds alleged for striking the portions of witness Gillett's testimony are founded in the statutory, common law prohibition against the introduction of evidence based upon hearsay.

In response the the Motion to Strike filed by Southern Bell, SCCTA filed a Return to the Motion. SCCTA submits that the hearsay

rule has not been contravened by the testimony cited by Southern Bell and that Southern Bell's Motion to Strike should be dismissed.

The Commission has considered the Motion to Strike filed by Southern Bell as well as the Return filed by SCCTA. Based upon the assertion in SCCTA's Return that the statements alleged to be hearsay by Southern Bell are not offered for the truth of the matter asserted, the Commission has determined that the Motion to Strike should not be granted. The testimony of witness Gillett will be admitted in its entirety, with the Commission bearing in mind that the portions of witness Gillett's testimony which contain statements attributable to other sources are not offered for the truth of the matter asserted. Therefore, the Motion filed by Southern Bell to strike portions of witness Gillett's testimony should be denied.

Southern Bell also filed a Motion to Strike certain portions of the prefiled testimony of Mary Prince submitted on behalf of SCCTA. According to the motion filed by Southern Bell, during the deposition of Ms. Prince held on February 9, 1990, the witness admitted that she had no direct personal knowledge of certain portions of her prefiled testimony. She admitted that she relied on the knowledge of others who had told her certain statements were true. Southern Bell objected to these statements on the grounds of hearsay.

SCCTA filed a Return to Southern Bell's Motion to Strike and submits that Southern Bell's reliance upon the rule on hearsay is misplaced. According to the Return of SCCTA, Ms. Prince's

testimony does not quote or attribute the statements made in the prefiled testimony to other sources; rather, such statements are statements made by witness Prince.

While it appears on the face of witness Prince's testimony that the statements made are her own, if it is shown that she has no independent knowledge of these statements, and the Commission has determined that such testimony would be considered in light of the fact that she has no personal independent knowledge of such. The Commission finds that such testimony could still be received into evidence, with the Commission giving the objectionable testimony whatever weight it felt the testimony deserved. Therefore, Southern Bell's Motion to Strike portions of witness Prince's testimony is hereby denied.

Lastly, Southern Bell filed a Motion to Strike the Petition of Intervention of SCCTA or, in the alternative, strike the direct testimony of any witness of SCCTA. Southern Bell asserts that the grounds for the Motion relate to SCCTA's failure to conduct discovery pursuant to the rules and regulations of this Commission and in disregard for the rights of other parties, particularly, Southern Bell, to this proceeding. The impetus of Southern Bell's Motion, as asserted in its Petition, comes from questions posed by counsel by Southern Bell during a deposition of an SCCTA witness. Mr. Kurt Newber, an employee of Vision Cable of Florence (Vision Cable is a member of the SCCTA) responded that neither his company nor any other member of the SCCTA had been asked to look for certain documents responsive to a request of Southern Bell.

Southern Bell contends that based upon the definitional portion of its interrogatories, SCCTA was required to have its membership search their files for responsive documents. Southern Bell alleges that as a result of this failure, Southern Bell has been placed at a disadvantage. Because of the alleged prejudice to Southern Bell, Southern Bell asked that the SCCTA's Petition to Intervene be stricken, or in the alternative, stike all of its testimony.

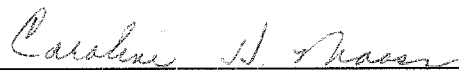
SCCTA filed a Return to this Motion by Southern Bell. SCCTA contends that it responded in good faith to each and every one of Southern Bell's interrogatories or requests for production of documents and has provided to Southern Bell each and every item and piece of information requested by it in such interrogatories and requests. It denies Southern Bell's assertions to the contrary.

The Commission has considered the Motion to Strike and the allegations contained therein, as well as the Return filed by SCCTA. The Commission is of the opinion, and so finds, that SCCTA has made a good faith effort in responding to Southern Bell's interrogatories and requests. The Commission does not believe that Southern Bell has been prejudiced in any way in this matter and such an extreme remedy of striking the Petition to Intervene or striking all direct testimony of the intervenor witnesses is too harsh a remedy. The Commission is of the opinion that because the

efforts in responding to the interrogatories and requests have been in good faith by the SCCTA, the requested relief sought by Southern Bell should be denied.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)